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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,718	06/17/2002	Gunther Spatz	2168.GLE.PT	2833

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,718

Applicant(s)

SPATZ, GUNTHER

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 36-45 and 47 rejected under 35 U.S.C. 102(b) as being anticipated by Friedberg US 3,462,034.

Friedberg '034 teaches a threaded plastic closure with a sealing insert.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-23, 25, 27, 29, 31-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Will US 2,800,240.

Wheaton '493 teaches applying a temporary closure cover (26) to the top of a bottle in order to protect it during cleaning phase, but does not teach applying a sealing device to the bottle.

Will '240 teaches applying a sealing device (14) before applying a closure cap. In column 1 lines 37-41, the reference teaches applying the sealing cap to keep the bottle clean.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Wheaton '493, providing the inner seal taught by Will '240 to protect the bottle during a cleaning phase.

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5. Claims 22-23, 25, 27, 29, 31-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over German patent DE 1,952,579 in view of Will US 2,800,240.

The German Patent teaches partially applying a closure cap to protect the mouth of the bottle during a spray cleaning phase, but does not teach applying a sealing device.

Will '240 teaches applying a sealing device (14) before applying a closure cap. In column 1 lines 37-41, the reference teaches applying the sealing cap to keep the bottle clean.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of the German Patent, providing the inner seal taught by Will '240 to protect the bottle during a cleaning phase.

6. Claims 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Gustafsson et al. US 6,351,924.

Wheaton '493, as modified, fails to teach a drying phase using gas.

Gustafsson '924 teaches it is known to dry a container neck finish after cleaning with a gas drying phase.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the drying method taught by Gustafsson '924 to the method taught by Wheaton '493, motivated by the benefit of preventing excess moisture from remaining on the bottle neck.

7. Claims 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over German patent DE 1,952,579 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Gustafsson et al. US 6,351,924.

The German Patent, as modified, fails to teach a drying phase using gas.

Gustafsson '924 teaches it is known to dry a container neck finish after cleaning with a gas drying phase.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the drying method taught by Gustafsoon '924 to the cleaning method taught by the German Patent, motivated by the benefit of preventing excess moisture from remaining on the bottle neck.

8. Claims 26, 30-31 and 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Hawkins et al. US 4,896,782.

Wheaton '493, as modified, fails to teach a plastic closure cap.

Hawkins '782 teaches a plastic closure cap (14) to seal over a closure sealing insert (30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the method taught by Weaton '493 as modified by Will '240 on the closure of Hawkins '782, motivated by the benefit of sterilizing the bottle of Hawkins '782.

9. Claims 26, 30-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over German patent DE 1,952,579 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Hawkins et al. US 4,896,782.

It is unclear if the German Patent, as modified, fails to teach a plastic closure cap.

Hawkins '782 teaches a plastic closure cap (14) to seal over a closure sealing insert (30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the method taught by the German Patent as modified by Will '240 on the closure of Hawkins '782, motivated by the benefit of sterilizing the bottle of Hawkins '782.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wheaton US 3,040,493 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Friedberg US 3,462,034.

Wheaton '493, as modified, fails to teach a latch.

Friedberg '034 teaches latch means (30).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the latch means taught by Friedberg '034 to the cap of Wheaton '493, motivated by the benefit of retaining the seal within the closure cap.

11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over German patent DE 1,952,579 in view of Will US 2,800,240 as applied above to claim 23 and further in view of Friedberg US 3,462,034.

The German Patent, as modified, fails to teach a latch.

Friedberg '034 teaches latch means (30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the latch means taught by Friedberg '034 to the cap of the German Patent, motivated by the benefit of retaining the seal within the closure cap.

12. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Friedberg US 3,462,034 as applied above to claim 36, in view of Dorn US 3,465,907.

Friedberg '034 fails to teach the cap being formed of Aluminum but does disclose the cap can be formed of metal.

Dorn '907 teaches it is known to form threaded closure caps of aluminum.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Friedberg '034, forming it of aluminum as taught to be known by Dorn '907, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

13. Claims 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedberg US 3,462,034 as applied above to claim 36, in view of Isele-Aregger US 2,829,790.

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Friedberg '034 fails to teach the sealing insert being coated with a sealing compound or formed two bonded materials.

Isele-Aregger '790, in the embodiment of figure 5, teaches a multi-layer sealing insert which comprises both a coated material, and two materials bonded together, for sealing a bottle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing insert of Friedberg '034, forming it of a coated material comprising two bonded materials, as taught to be known by Isele-Aregger '790, motivated by the benefit of providing an expedient sealing means, and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

14. Applicant's arguments with respect to claims 22-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


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